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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

MARTIN RODRIGUEZ GARCIA,

Defendant and Appellant.

G055959

(Super. Ct. No. 16WF0797)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Cheri T. Pham, Judge. Affirmed.

Allen G. Weinberg, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland, Alana Butler and Scott C. Taylor, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Martin Rodriguez Garcia was convicted of sexually abusing his four daughters. He contends the trial court erred by failing to declare a mistrial or conduct a hearing into possible juror bias after his youngest daughter Reli experienced a health problem during her testimony. He also argues the court improperly admitted evidence of uncharged misconduct and imposed an illegal sentence. Finding these claims unmeritorious, we affirm the judgment.

FACTS

Appellant's oldest daughter Jessica testified appellant molested her on multiple occasions from the time she was five years old to about the age of twelve. Most of the molestation involved appellant touching Jessica's vagina or making her touch his penis. However, appellant also sodomized her once, and on another occasion, he put his penis on or in her vagina. He also subjected her to various forms of physical abuse, including paddling her buttocks and burning her hand on a hot stove.

Yesenia, appellant's second daughter, described an incident in which appellant molested her in the bathroom when she was seven years old. She testified that during that episode, and on many occasions thereafter, appellant rubbed his penis against her vagina. Over the years, he also placed his finger inside her vagina and subjected her to an array of physical abuse.

Appellant's third daughter, Isabel, testified appellant sexually assaulted her on two occasions while she was trying to sleep. During the first incident, appellant pulled off her pants and put his hand on her leg, and during the second, she awoke to find appellant licking her chest. Appellant also physically abused her and showed her pornographic videos from time to time.

Like her older sisters, Reli accused appellant of a variety of sexual misconduct. She testified appellant touched her vagina with his hand, mouth and penis on multiple occasions, and one time he put his penis against her mouth while she was sleeping.

All of the alleged acts occurred when the victims were under the age of 14. However, they were not brought to light until the victims were adults. When she was in her early twenties, Yesenia confided in Isabel that appellant had molested her, and that prompted Isabel to tell Yesenia what appellant had done to her. They decided to report the abuse to the authorities, but when they called the police they were told appellant's crimes were too old to be prosecuted. About a year later, they talked to Jessica about the situation, and she revealed appellant had molested her too. So they contacted the police again, and this time a formal investigation was launched. During the investigation, detectives found photos of child pornography on appellant's phone. He was ultimately charged with 20 counts of child sexual abuse.

At trial, the defense argued that while appellant may have been physically abusive to his daughters, he did not sexually abuse them. The defense theorized that after the victims learned there was a statute of limitations problem regarding the physical abuse, they fabricated claims of sexual abuse to get even with appellant. However, the jury convicted appellant of 18 counts of molestation and found a multiple victim allegation true. The trial court sentenced appellant to prison for a determinate term of nine years and four months, plus an indeterminate term of 210 years to life.

DISCUSSION

Reli's Health Issue

During her testimony, Reli became ill and paramedics were summoned to the courtroom to assist her. Appellant contends the incident was so alarming the trial court should have declared a mistrial, or at least conducted a hearing into whether it resulted in juror bias. However, we do not believe the trial court mishandled the situation in any respect.

When Reli took the stand, she was 20 years old and due to give birth in a couple of weeks. She was also a little sick and coughed throughout her testimony. As she was describing what appellant did to her, she started to cry and apologized for not

being able to finish her answer. At that point, the court recessed the proceedings for a 10 minute break, and the jury left the courtroom.

After that, Reli started to hyperventilate. The paramedics were called and arrived at the courtroom with their equipment and a stretcher. No jurors were present in the courtroom at that time. While the paramedics were tending to Reli, defense counsel asked the judge to instruct the jury to leave the floor on which the courtroom was located. Defense counsel made the request because he did not want the jury to see Reli if she had to be taken out of the courtroom on a stretcher. Finding the request well taken, the judge ordered the bailiff to release all of the jurors, and he instructed them to leave the floor.

As it turned out, Reli was not taken out of the courtroom on a stretcher or under the care of the paramedics. Instead, she left in a wheelchair assisted by the bailiff and other sheriff's deputies. Following her departure, defense counsel moved for a mistrial. He argued, "It was . . . fairly obvious [Reli] was having a panic attack of some sort. And I just think the jurors saw enough of that, coupled with all the medical professionals that responded, to" irreparably taint the proceedings. The trial court disagreed. Noting it was obvious that Reli was pregnant and not feeling very well when she took the stand, the court did not believe the incident infringed appellant's fair trial rights. Therefore, it denied his motion for a mistrial.

The court then ordered the trial to resume, and the prosecutor called another witness to the stand. At the end of the day, a Tuesday, the court told the jury the court would be in recess the rest of the week, as well as the following week. This delay was attributable to the Thanksgiving holiday and the attorneys' scheduling demands; it had nothing to do with Reli's situation. She resumed her testimony without incident the first day back after the break, which was 13 days after she initially took the stand.

Appellant contends the trial court abused its discretion in denying his mistrial motion, and he also faults the court for not questioning the jurors to ascertain what they saw and how they were affected by virtue of what happened during Reli's

initial testimony. However, appellant did not ask the court to question the jury about the incident, and therefore he has forfeited his claim the court should have done so. (*People v. Ramirez* (2006) 39 Cal.4th 398, 460.) While appellant argues the court had a sua sponte duty to make inquiry into possible juror bias, the decision whether or not to do so rested within the sound discretion of the court, as did the decision whether or not to declare a mistrial. (*Id.* at p. 461.) There are several reasons why no inquiry or mistrial was required under the circumstances presented in this case.

First, contrary to appellant's claim, Reli was not taken out of the courtroom on a stretcher by the paramedics. Rather, she was taken out in a wheelchair by the bailiff, which signaled she was experiencing a less serious medical problem.

Second, the jury had already been instructed to leave the floor by the time Reli was removed from the courtroom. Thus, it is unlikely any of the jurors actually saw her departure.

Third, it was obvious that Reli was quite far along in her pregnancy and feeling sick when she initially took the stand. Given the fact she was feeling under the weather from the get-go, the jury would be less inclined to believe her deteriorating condition was attributable to trauma associated with appellant's alleged acts, as opposed to her then-existing physical state.

And lastly, even though Reli did not resume her testimony for nearly two weeks after the incident, that extended break was attributable to scheduling factors unrelated to Reli's condition.

All things considered, we do not believe the incident compromised the jurors' ability to be fair and impartial, nor did it irreparably impair appellant's fair trial rights. Certainly we cannot say the court erred in failing to conduct an inquiry into the

issue or by refusing to grant a mistrial. (*People v. Ramirez, supra*, 39 Cal.4th at pp. 460-461.)¹

Uncharged Misconduct Evidence

Appellant asserts the trial court erred in admitting evidence he once sexually molested his niece Roxana, who was not an alleged victim in this case. Again, we disagree.

Roxana was 37 years old at the time of trial. She testified that one night while she was sleeping at appellant's residence when she was 11 or 12 years old, she awoke in the night to find appellant naked on her bed, touching her leg. She repositioned her body to show she was awake, and after that, appellant jumped off her bed and left her alone. However, following that incident, Roxana always locked the door and kept a knife under her pillow when she slept over at appellant's house.

The trial court admitted this evidence under Evidence Code section 1108. That section authorizes the introduction of the defendant's prior sex crimes to prove his propensity for sexual misconduct, so long as the evidence is not unduly prejudicial under Evidence Code section 352. With respect to Roxana's testimony, the trial court instructed the jurors they could use it to conclude appellant had a propensity to commit the charged offenses if they were convinced by a "preponderance of the evidence" that he committed a lewd act on Roxana. (CALCRIM No. 1191.)

Appellant contends Evidence Code section 1108 violates due process because it allows a defendant to be convicted based on his prior crimes. He also asserts the reference to the preponderance of the evidence in the court's jury instruction diluted the prosecution's burden of proof. However, as appellant admits, the California Supreme

¹ In its concluding instructions, the trial court admonished the jurors not to allow bias, sympathy or prejudice to influence its decision, and to disregard anything it saw or heard while the court was not in session, even if it was said or done by one of the witnesses. This further diminished the chances of the incident causing appellant prejudice. (See generally *People v. Sanchez* (2001) 26 Cal.4th 834, 852 [jurors are presumed to follow the instructions they are given].)

Court has rejected these arguments (*People v. Villatoro* (2012) 54 Cal.4th 1152, 1160; *People v. Reliford* (2003) 29 Cal.4th 1007, 1012-1016; *People v. Falsetta* (1999) 21 Cal.4th 903, 916-918), and therefore we are powerless to do otherwise (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455).

Appellant also argues Roxanne's testimony should have been excluded as being unduly prejudicial under Evidence Code section 352. While the incident she described was fairly remote, it wasn't any more prejudicial than the evidence regarding the charged offenses. And her testimony about what appellant allegedly did to her was not confusing, misleading or unduly time consuming. The trial court did not abuse its discretion in admitting it.

Sentencing

At sentencing, the trial court imposed a determinate prison term of nine years and four months, plus an indeterminate term of 210 years to life. Appellant contends the indeterminate component of his sentence is cruel and unusual, but we cannot agree.

Appellant's claim requires fairly short shrift. Not only did he fail to object to his sentence as being cruel and unusual in the trial court, raising the specter of forfeiture (*People v. Baker* (2018) 20 Cal.App.5th 711, 720), he offers no substantive analysis of the pertinent factors applicable to an Eighth Amendment challenge. (See *People v. Mendez* (2010) 188 Cal.App.4th 47, 64 [the constitutionality of a criminal sentence is determined by examining "the nature of the offense and the defendant, the punishment for more serious offenses within the jurisdiction, and the punishment for similar offenses in other jurisdictions."].) Instead, appellant simply claims that his sentence is unconstitutional because he will die in prison before he is ever eligible for parole.

Appellant is right that the parole aspect of his sentence is probably a legal fiction. He also correctly notes that Justice Mosk once wrote a concurring opinion

decrying multi-century sentences as being oblivious to life expectancy tables. (See *People v. Deloza* (1998) 18 Cal.4th 585, 600–602 (conc. opn. of Mosk, J.).) But concurring opinions are not the law (*People v. Byrd* (2001) 89 Cal.App.4th 1373, 1382–1383), and as respondent points out, courts have repeatedly upheld the constitutionality of lengthy prison terms in child sexual abuse cases. (See, e.g., *People v. Reyes* (2016) 246 Cal.App.4th 62, 82-90; [life without parole]; *People v. Retanan* (2007) 154 Cal.App.4th 1219, 1230 [135 years to life]; *People v. Wallace* (1993) 14 Cal.App.4th 651, 666-667 [283 years and eight months]; *People v. Bestelmeyer* (1985) 166 Cal.App.3d 520, 531-532 [129 years].)

Appellant was convicted of repeatedly molesting all four of his daughters, “a most serious crime and an act repugnant to the moral instincts of a decent people.” (*Ashcroft v. Free Speech Coalition* (2002) 535 U.S. 234, 244.) Considering the egregious nature of his actions, and his failure to show otherwise, we do not believe his sentence is cruel or unusual.

DISPOSITION

The judgment is affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

MOORE, J.

GOETHALS, J.